

Tippecanoe County Drainage Board

Minutes

August 5, 2009

Regular Meeting

Those present were:

Tippecanoe County Drainage Board President Thomas Murtaugh, Vice President David Byers, member John Knochel, County Surveyor Steve Murray, Drainage Board Attorney Dave Luhman, Drainage Board Engineering Consultant Dave Eichelberger from Christopher B. Burke Engineering Limited, and Drainage Board Secretary Brenda Garrison. Project Manager Zachariah Beasley was also in attendance.

Approval of Minutes

David Byers made a motion to approve the July 1, 2009 Regular Drainage Board minutes as written. John Knochel seconded the motion. The August 5, 2009 Drainage Board meeting minutes were approved as written.

Otterbein United Methodist Church

Pat Williams represented TBird Designs and appeared before the Board to request final approve for the Otterbein United Methodist Church. The site consisted of approximately 8 acres of an overall 27 acre tract and located south of US 52 on the north side of County Road 500 North within the town limits of Otterbein. The Otterbein Regulated Drain ran along the east side of tract. It was expected once the project was completed runoff to Otterbein ditch would actually decrease- therefore a detention exemption from the Ordinance was requested for the project. Runoff would be routed through a storm sewer system then vegetated swales to a dry detention facility (shallow depression- for sediment treatment) and ultimately to the aforementioned Otterbein Regulated Drain. Pat Williams stated they concurred with the conditions stated on the July 31, 2009 Burke memo. He noted they were seeking a Stormwater detention exemption as well as final approval. David Byers made a motion to grant final approval with the conditions as listed on the July 31, 2009 Burke memo for the Otterbein United Methodist Church. John Knochel seconded the motion. The Otterbein United Methodist Church was granted final approval with conditions as listed on the July 31, 2009 Burke memo.

Raintree Medical Park

Justin Frazier representing TBird Designs appeared before the Board and requested final approval for the Raintree Medical Park project. The site consisted of 28 commercial lots on an overall 34 acre tract and was located within the City of Lafayette limits specifically on the north side of Haggerty Lane (County Road 200 South) just south of the new St. Elizabeth Hospital and immediately east of Cross Winds Apartments (formerly known as Raintree Apt's.) The entire site was currently undergoing annexation to the City of Lafayette and they would be conducting the Stormwater review. Justin Frazier stated today's presentation to the Board regarded the discharge impact to Elliott Regulated Drain and the required contribution to the F-Lake Regional Detention facility only. The site drained to the west into existing storm sewers and swales to open ditches and twin 66 inch culverts under State Road 38 ultimately to the SW Elliott Regulated Drain just downstream from F-Lake Regional Detention Facility. Newly constructed roads and storm sewers would be tied into the existing infrastructure. No outside detention was planned for the site as contribution to the F-Lake Regional Facility was planned. He stated they agreed with comments made on the July 30, 2009 Burke memo and requested final approval. The Surveyor stated the City of Lafayette would conduct the in depth review of the project as the Board today was to review the project's release rate only to the Regulated Drain system. He recommended final approval with the conditions as stated on the July 30, 2009 Burke memo. David Byers made a motion to grant final approval with the conditions as stated on the July 30, 2009 Burke memo. John Knochel seconded the motion. Raintree Medical Park was granted final approval with the conditions as stated on the July 30, 2009 Burke memo.

Other Business

Revise September 2009 Meeting date

David Byers made a motion to revise the September 2, 2009 meeting date to September 15, 2009 at 10 a.m. due to a scheduling conflict. John Knochel seconded the motion. The September 2, 2009 meeting date was revised to September 15, 2009 at 10 a.m.

Steve Murray

Bonds:

The Surveyor presented the following to the Board for approval: Hunters Crest Section 3B Maintenance Bond #5035792 in the amount of \$5377.00 written by Bond Safeguard Ins. Co. and submitted by Benjamin Crossing LLC and Hunters Crest Section 3B Irrevocable Letter of Credit #401190213 in the amount of \$3000.00 written by Bank of Indianapolis and submitted by Mann Properties to guarantee satisfactory seeding. David Byers made a motion to approve

Hunters Crest Section 3B Maintenance Bond #5035792 in the amount of \$5377.00 written by Bond Safeguard Ins. Co. and submitted by Benjamin Crossing LLC as well as Hunters Crest Section 3B Irrevocable Letter of Credit #401190213 amount \$3000.00 written by Bank of Indianapolis and submitted by Mann Properties. John Knochel seconded the motion. Hunters Crest Section 3B Maintenance Bond #5035792 amount \$5377.00 written by Bond Safeguard Ins. Co. submitted by Benjamin Crossing LLC and Hunters Crest Section 3B Irrevocable Letter of Credit #401190213 amount \$3000.00 written by Bank of Indianapolis and submitted by Mann Properties were approved as presented.

S.W. Elliott Branch #11/Referral to Surveyor for Report

The Surveyor stated he had received a letter from Mr. Jerry Brand/INOK Investments LLC (Note: The letter will appear in the minutes in its entirety immediately preceding the minutes.) He stated there had been several discussions on reconstruction or providing an outlet for the north side of SR 38 in order for the runoff to reach the recently completed F-Lake Regional Facility. The letter requests action to be taken under I.C. 36-9-27-36. This is the section which referred to classification of drains and the report thereof. The Surveyor noted he had completed a Classification of Drains report and presented it to the Board at an earlier date. The report listed drains in need of reconstruction as the following: A. Berlowitz Drain (Phase 1 has been completed) B. JN Kirkpatrick (majority completed) C. S.W. Elliott 1. F-Lake Detention Facility (Completed) 2. Branch #11 (at S.R. 38 near Tractor Supply)

Under I.C. Section 36 3C it states: "The Board shall refer each regulated drain to the County Surveyor for a report in accordance with the long range plan if no long range plan has been adopted and if the Surveyor has classified only part of the regulated drains, the Board may refer the regulated drains that have been classified to the Surveyor for a report in the order of the priority set forth in the classification". It was the Surveyor's recommendations the Drainage Board refer S.W. Elliott Branch #11 for a Surveyor's report as the drains listed above it were completed. He stated as an urban drain the reconstruction process was a little different. Basically when one refers a regulated drain for reconstruction to the Surveyor, the Surveyor shall determine and set forth in his report the best and cheapest method of reconstructing the drain so that it would adequately drain all the land. The surveyor shall then prepare the necessary maps, profiles, specifications and estimates of cost. A spreadsheet containing the name and address of each watershed landowner and a legal description of the land for each owner would be prepared. Once the report is filed with the Board, the Board shall take the following actions: Prepare a schedule of assessments containing a description for each land determined to be benefited by the reconstruction, the name and address of the landowner, determine the amount of damages sustained by any owner as a result of the reconstruction, the name and address of each owner determined to be damaged and explanation as to why. Percentage of annual assessment based on the total assessment for the entire watershed. Once the Schedule of Damages and Assessments are completed marked and filed, the Board shall fix a date, time and place for a hearing on the reconstruction report from the County Surveyor. The report shall contain the schedule of benefits and damages and reconstruction cost for each tract of land within the watershed. Not less than 30 days and no more than 40 days prior to a landowner hearing, the Board shall mail a copy of the notice in a five day envelope to each landowner named in the Schedule of Damages and Assessments. A hearing is then held on the date, time and place arranged.

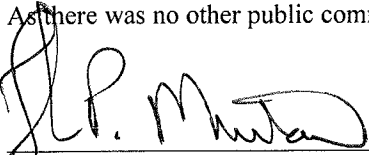

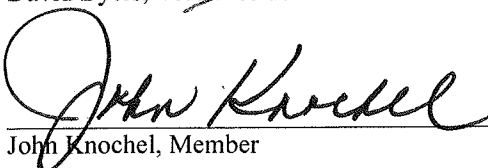
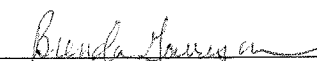
Tom Murtaugh asked for public comment. Mr. Gary Schroeder 5650 East 700 South Lafayette approached the Board. He requested the Board not refer the drain for a report. He stated there was a process under 36-9-27-36 which stated if a person was changing their land use from rural land to urban land a petition process was required. He stated "we all know there is a person north of my land which is changing the land use from rural to urban and they have an option under this code to file a petition and why they haven't done so I think speaks for itself. There is a process to do that and it protects us more if they file a petition. If they are in need of the land to be changed, there is a process for them to do that. It is my understanding if they do that or even if they refer it the landowners should be notified, there should be a public hearing as talked about. I think the petitioner should be required to file a petition. I don't think this affects more than one owner, I ask the Board to let the process work. Thank you." Responding to Mr. Murtaugh, Mr. Schroeder stated his land was zoned GB. Mr. Schroeder then stated he was requesting a Public Hearing to debate the issues. The Surveyor stated he had discussed with the Drainage Board Attorney earlier and Branch 11 of the Elliott does not need to be moved up in the report as it was already on the list and the drains listed before it were completed.

Dave Luhman, Board Attorney then explained: One was dealing with 2 sections of the code both in 36-9-27. Section 35 dealt with the classification of drains and the order of priority of work which requires the Surveyor to submit a written report. The report would classify regulated drains as in need of reconstruction, maintenance or if no longer needed vacated. The classification was in the order of priority for action by the Board. The Surveyor reported earlier of previous classifications the Board had adopted and the order of priority which some had been completed. Berlowitz, JN Kirkpatrick, F-Lake and Elliott Branch #11 were already classified as in need of reconstruction. The Board has followed the order of priority and is now to Elliott Branch #11 according to that order of priority. That is covered under Section 35. If a landowner thinks the classification was wrong then 10 percent of the owners within the watershed may request a hearing and ask the Board to change the classification of a drain. If they believe it does not need to be reconstructed they can file a petition to change the classification. That isn't what is being dealt with here. So under Section 35 one has classified all the drains in order of priority to have work done. If someone objected to the classification they could have filed a petition. Under Section 36 it

talks about a long range plan for reconstruction and maintenance of drains. It states after the drains have been classified or partially classified, then the Surveyor is to prepare a long range plan for reconstruction of regulated drains that need reconstruction, establishing the annual maintenance assessment for drains in need of maintenance and vacating drains which had been classified as needed to be vacated. The plan should set forth the approximate date of when the drain would be referred to the Surveyor for the report. This also takes into consideration the workload of the Surveyor and some estimate of the time it would take to prepare the report. The Board then approves the long range plan for the order of completion. 36C states: If a long range has not been adopted for all drains and only a partial classification has been completed, then the Board can at anytime refer a regulated drain that has been classified to the Surveyor for a report in the order of priority set forth in the partial classification. 36D states: If there is any landowner who thinks the long range plan and its estimate of when it would be referred is wrong, a petition can be filed asking the Board to move up the drain on the long range plan. However the status of Elliott Branch #11 at this time is the Board had not yet referred it to the Surveyor for a report. It can be referred to the Surveyor at any time. So the Boards discretion is you may refer the drain to the Surveyor for a report at any time but should be done in the order of priority within the classification. If a petition was filed a hearing would be conducted and a decision made on whether the drain was indeed in need of reconstruction and whether it should be referred to the Surveyor. The Board has the discretion today to refer Elliott Branch #11 to the Surveyor for a report as it is in the order of classification or the Board could take action saying we are intending to refer this to Surveyor for a report at a later date. A landowner who thinks the date was too far in the future may file a petition under 36D to request the hearing be moved up. There is no time limit for the Surveyor to get the report back to the Board, he has to do it until it is complete and satisfied it is correct. When he is satisfied, then he can refer it back to Board. When the Surveyor returns the report to the Board, there is notice to all affected landowners, publication in the newspaper, a separate public hearing would be held by the Board regarding the Surveyor's report. The Board would make a determination at that time to proceed with the reconstruction or not. The Board has to decide if the benefit outweighs the cost. This would be the opportunity for a landowner to present evidence they have as to whether or not it should be reconstructed or if the Surveyor's report was correct. Responding to Mr. Murtaugh, the Surveyor stated if the Board refers it to him for a report and a reconstruction on Branch #11 was planned there were a couple of benefits. 1. The Department of Transportation or whoever owns what is now S.R. 38 would have to put whatever size bridge or culvert that the Surveyor determines is needed in at their own expense. They do get the option to see if they can come up with a better, cheaper idea. 2. Utilities must relocate at their own expense. At that time the Surveyor reviewed his classification report last submitted to the Board. Once again he recommended Elliott Branch #11 Regulated Drain be referred to him for a report. Mr. Gary Schroeder then interjected and stated he was not prepared to give a report today and he did not think it would make a difference if postponed a month. He would like to have the opportunity to make a presentation to the Board. The attorney noted it was possible the report could be rejected by the Board once presented by the Surveyor. There was no other public comment. David Byers made a motion to refer Elliott Branch 11 Regulated drain for a reconstruction report to the Surveyor. John Knochel seconded the motion. The Board directed the secretary to add the S.W. Elliott Branch #11 report update to the Drainage Board Meeting Agendas for the next few months.

Public Comment

Malcolm Miller 1 North 1025E Lafayette Indiana approached the Board. He thanked the Surveyor and the Board for work done in the spring on the John Hoffman Regulated Drain. He requested the drain be mowed and asked if more work was planned. He thought additional grading was to be done east of 1025E. The Surveyor stated grading would be completed once the crops were out. Mr. Miller then thanked the Board again for the work done and stated the drain was in better shape. As there was no other public comment, David Byers moved to adjourn. The meeting was adjourned.


Thomas Murtaugh, President
David Byers, Vice President
John Knochel, Member
Brenda Garrison, Secretary

